



# ಕರ್ನಾಟಕ ರಾಜ್ಯಪತ್ರ

ಅಧಿಕೃತವಾಗಿ ಪ್ರಕಟಿಸಲಾದುದು

ಸಂಪುಟ ೧೫೧ Volume 151	ಬೆಂಗಳೂರು, ಗುರುವಾರ, ಫೆಬ್ರವರಿ ೪, ೨೦೧೬ (ಮಾಘ ೧೫, ಶಕ ವರ್ಷ ೧೯೩೭) Bengaluru, Thursday, February 4, 2016 (Magha 15, Shaka Varsha 1937)	ಸಂಚಿಕೆ ೫ Issue 5
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## ಭಾಗ ೪

ಕೇಂದ್ರದ ವಿಧೇಯಕಗಳು ಮತ್ತು ಅವುಗಳ ಮೇಲೆ ಪರಿಶೀಲನಾ ಸಮಿತಿಯ ವರದಿಗಳು,  
ಕೇಂದ್ರದ ಅಧಿನಿಯಮಗಳು ಮತ್ತು ಅಧ್ಯಾದೇಶಗಳು, ಕೇಂದ್ರ ಸರ್ಕಾರದವರು ಹೊರಡಿಸಿದ  
ಸಾಮಾನ್ಯ ಶಾಸನಬದ್ಧ ನಿಯಮಗಳು ಮತ್ತು ಶಾಸನಬದ್ಧ ಆದೇಶಗಳು ಮತ್ತು  
ರಾಷ್ಟ್ರಪತಿಯವರಿಂದ ರಚಿತವಾಗಿ ರಾಜ್ಯ ಸರ್ಕಾರದವರಿಂದ  
ಪುನಃ ಪ್ರಕಟವಾದ ಆದೇಶಗಳು

### ELECTION COMMISSION OF INDIA

Nirvachan Sadan, Ashoka Road, New Delhi-110001.

### NOTIFICATION

Dated: 17<sup>th</sup> November, 2015, 26 Kartika, 1937. (Saka).

No. 82/KT-LA/07/2013 - In pursuance of section 106 (b) of the Representation of the People Act, 1951 (43 of 1951), the Election Commission hereby publishes the order of the High Court of Karnataka dated 01-07-2015 in Election Petition No. 7 of 2013.

By Order,

**TAPAS KUMAR**

SR. PRINCIPAL SECRETARY

ELECTION COMMISSION OF INDIA

**IN THE HIGH COURT OF KARNATAKA AT BENGALURU**

**DATED THIS THE 1ST DAY OF JULY 2015**

**BEFORE**

**THE HON'BLE MR. JUSTICE L. NARAYANA SWAMY**

**ELECTION PETITION NO.07 OF 2013**

#### BETWEEN:

SRI.NEMARAJANA K

S/O KASHYANA K

AGED ABOUT 41 YEARS

RESIDING AT 260, WEST WING GOUDARA VONI

MARIYAMMANAHALLI THANDA

MARIYAMMANAHALLI

HOSPET TALUK

BELLARY DISTRICT 583 222

(BY SRI. SIDDHARTHA H M, ADV.)

... PETITIONER

(೧)

AND:

1. SRI BHEEMANAIAK LBP  
S/O L B SAMYA NAIK  
MAJOR  
RESIDING BEHIND APMC,  
NEAR VISHWA BHARATHI SCHOOL  
HAGARIBOMMANAHALLI
2. SRI MARENNA L  
S/O LATE LALEPPA  
MAJOR  
RESIDING AT HOUSE NO.LIG 71  
KHB COLONY  
NETAJI NAGAR, NEAR OPD. BELLARY
3. SRI DODDA RAMANNA  
S/O P HANUMANTAPPA  
MAJOR  
MALLANAYAKANA HALLI  
KOTTUR POST  
KUDLIGI TALUK  
BELLARY DISTRICT
4. SRI EKAMBRESH NAIK  
S/O DURGYA NAIK  
MAJOR  
DOOR NO.352  
ANJANEYA SWAMI TEMPLE AREA  
MARIYAMMANAHALLI THANDA  
HOSPET TALUK  
BELLARY DISTRICT
5. SRI MOHAN DASARI  
S/O D BHAGAVANTAPPA  
MAJOR  
RESIDING AT NO.28  
RAMANAGARA  
H B HALLI  
BELLARY DISTRICT
6. SRI RAVIKUMAR V  
S/O V GIRIVAPPA  
MAJOR  
OLD H B HALLI  
HAGARIBOMMANAHALLI  
BELLARY
7. KUM MANASVI  
D/O V H HANUMANTAPA  
MAJOR  
32, 1ST B MAIN BANDI  
MATA BADAVANE  
KENGARI UPANAGARA  
BENGALURU
8. SRI NAGARAJA V  
S/O MANJAMMA  
MAJOR  
GAJAPURA POST  
KUDALGI TALUK,  
BELLARY DISTRICT

9. SRI AROGYA SWAMY B  
S/O BALARAJU  
MAJOR  
RESIDING AT NO.48  
ARDINENS ROAD, FORT  
BELLARY DISTRICT
  10. SRI BHEEMAPPA POOJARA  
S/O HANUMANTAPPA  
MAJOR  
RESIDING NEAR MARUTHI GARADIMANE  
RAMANAGARA  
HAGARIBOMMANAHALLI  
BELLARY DISTRICT
  11. SRI V PAVANA KUMAR  
S/O V GOVINDA  
MAJOR  
RESIDING AT WARD NO.8  
DOOR NO.202 A  
BENGALURU ROAD  
PATAKANDAKAM STREET  
BELLARY
  12. SRI H GOPALA  
MAJOR  
RESIDING AT MALIYAPPA  
4TH WARD  
A MARIYYAMMANAHALLI  
HOSPET TALUK  
BELLARY DISTRICT
  13. KOTRESHAPPA M  
S/O BASAVARAJAPPA  
MAJOR  
RESIDING AT K AYYANAHALLI  
KUDLIGI TALUK  
BELLARY DISTRICT
- ... RESPONDENTS
- (BY SRI.JAGADISH, SR. ADV. FOR SRI.V JAVAHAR BABU, ADV.  
FOR R1 )

THIS ELECTION PETITION IS FILED U/SS 81,83 & 100 OF THE REPRESENTATION OF THE PEOPLE ACT, 1951 READ WITH RULE 4 OF THE ELECTION PETITION PROCEDURE RULES KARNATAKA 1967, PRAYING TO A) DECLARE THE ELECTION OF THE RESPONDENT NO.1 (RETURNED CANDIDATE) AS VOID ON THE GROUND OF IMPROPER RECEPTION, REFUSAL OR REJECTION OF ANY VOTE OR THE RECEIPT OF ANY VOTE WHICH IS VOID AND FOR NON-COMPLIANCE WITH THE PROVISIONS OF THE CONSTITUTION OR OF THIS ACT OR OF ANY RULES OR ORDER MADE UNDER THIS ACT AS THE SAME FALLS UNDER SECTION 100(1)(D)(III) AND SECTION 100(1)(D)(IV) OF THE REPRESENTATION OF PEOPLE ACT, 1951; B) FURTHER, DECLARE THE PETITIONER AS HAVING BEEN ELECTED TO THE HAGARIBOMMANAHALLI CONSTITUENCY RESERVED FOR SC CANDIDATE ; C) FOR SUCH OTHER RELIEF/S AS THIS HON'BLE COURT DEEMS FIT AND PROPER CIRCUMSTANCES OF THE CASE INCLUDING COST OF THESE PROCEEDINGS.

THIS ELECTION PETITION COMING ON FOR PRONOUNCEMENT OF ORDERS ON IA NO.1/2015 THIS DAY AFTER HAVING HEARD AND RESERVED FOR ORDERS ON 11.06.2015, THE COURT MADE THE FOLLOWING:

### ORDER

The petitioner has filed this election petition u/s 81, 83 and 100 of the Representation of the People Act, 1951 r/w Rule 4 of Election Petition Procedure Rules Karnataka, 1967, hereinafter referred to as 'the Act' and 'the Rules' respectively. The petitioner has prayed for declaring the election of Respondent No.1 as void on the ground of improper reception, refusal or rejection of any vote or the

receipt of any vote which is void and for non-compliance with the provisions of the Constitution or the Act and rules or order made under this Act as the same falls u/s 100(1)(d)(iii) and Section 100(1)(d)(iv) of the Act and to declare the petitioner as the returned candidate.

2. The facts to be stated in brief are that petitioner is a resident of Mariyammanahalli Thanda, Hospet, Bellary District belongs to SC. He was also member of the Legislative Assembly from the same constituency from 2008-13. He contested from the same constituency to the State Assembly to the election held on 5.5.2013 for which counting took place on 8.5.2013. The first respondent secured 51972 votes as against petitioner securing 51847, the difference being 125. These voting figures are not correct. There is discrepancy between the number of votes polled and number of votes counted. The returning officer has taken into account votes which were not polled at all. He has given instances of discrepancy in respect of Mutaganahalli, Kogalli, Jagatageri polling stations and claims 21 votes were excess votes as against the votes polled there. It is stated, it is quite possible that from the remaining 211 polling stations even if there is difference of 1 vote per each polling station it would make a marked difference in the votes polled and votes counted.

3. It is further stated that apart from the discrepancy in the counting votes and its calculation in the counting votes and its calculation, there is a marked difference between number of postal ballots supplied to voters on election duty and the postal ballot papers that were received. The Returning Officer has received only 897 postal ballot votes as against 1017 issued. The grounds on which the votes were rejected were not revealed to the candidate or their counting agents. The petitioner stated, because of loud noise in the counting hall and also considerable distance between the counting clerk and the supervisor, report could not be heard properly. The counting hall was over crowded by the candidate, their counting agents and other observers. It is claimed, the result of the election has materially affected by the above irregularity.

4. The respondent No.1 filed statement of objections denying the averments made in the election petition. It is stated, election commission has conducted the election in a fair and impartial manner. The counting process was also conducted in accordance with the procedure prescribed as per the Election Commission Rules. The votes polled and votes counted are one and the same. The cursory glance at the election petition neither discloses any cause of action nor the mandatory compliance of the requirements in the pleadings and the documents in support of the Election Petition. Election petition lacks merits and deserves to be dismissed.

5. The first respondent filed application u/s 87 of the Act r/w Order VI Rule 16 of Code of Civil Procedure seeking to strike out the pleadings in the election petition, which are unnecessary, frivolous and vexatious. It is sworn to in the affidavit that after striking out such pleadings, no cause of action survives and accordingly petition itself to be dismissed. It is stated, the allegations made in Paras 8 to 11 and 14 to 18 relate to discrepancy in number of votes polled and counted and that the Returning Officer has taken into account the votes which were not polled. The said statements are vague and do not disclose cause of action.

6. At paragraphs 23 to 25 the grounds in support of the said allegations are also equally vague and do not disclose the cause of action. Section 100(1)(d)(iv) of the Act is not applicable to the case on hand. The first respondent seeks to strike out the pleadings of paragraphs No.8 to 10 regarding discrepancy in counting of votes, excess votes counted i.e., 21 votes and Returning Officer taking into account the invalid votes. So also the averments made in Para-11 regarding discrepancy in declaring the result of the election, para-14 regarding not furnishing certified copies. In W P No.221160/2014 (GM-KEB) DD 15.6.2004 this court directed to furnish the documents in two days but the petitioner has utterly failed to produce certified copy of the said order.

7. As regards para-15 relating to counting of only 897 postal ballot votes as against issuance of 1017 ballot papers and the Returning Officer rejected 40 votes out of 897 votes, Para-16 relating to oral report of the figures by the counting clerk to the supervisors could not be recorded immediately by the supervisor because of loud noise in the counting hall etc., Para-17 relating to counting clerks counted the second and third round even before the results of first round and hence lot of confusion was created, paragraphs 23, 24 & 25 and para-18 relating to election being materially affected are all frivolous, vexatious and bereft of material facts. It is stated that there is no foundation laid nor there is any pleading nor any ground made out to show that election is materially affected. Without mentioning all necessary material facts which afford basis for the grievance and without stating how they affect the process of counting, the said pleadings cannot form foundation for filing the election petition. Hence the first respondent prays for allowing the application.

8. The above application is resisted by the petitioner by filing statement of objections reiterating the averments made in the election petition and prays for rejection of the application.

9. I have heard the learned senior counsel for the first respondent on the application and learned counsel for the petitioner. The point that arises for consideration is, whether the application IA No.1/2015 filed by the first respondent deserves to be allowed? The said point is answered in favour of the first respondent for the following reasons.

10. The election petition is founded on the grounds of discrepancy in counting of votes i.e., excess counting of voters, Returning Officer has counted the votes which were not polled and discrepancy in counting of postal ballot papers of voters who were on election duty. It is stated, as against 1017 ballot papers issued, only 897 ballot papers were received and in that 40 votes were rejected without assigning any reasons. As a next ground, it is averred that there was heavy crowd in the counting hall, unnecessary people were gathered there, they could not hear the report from the counting clerks and that there was confusion created by the counting clerks also in going to count 2nd and 3rd rounds without displaying the results of first round.

11. The learned senior counsel for the first respondent has placed reliance on the following authorities and submitted to allow the application and to dismiss the election petition summarily as there is no triable case made out by the petitioner.

- (a) Azhar Hussain vs., Rajiv Gandhi, reported in 1986(Supp) SCC 315 to contend that election petition could be summarily dismissed for want of cause of action.
- (b) Dharti Pakar Madan Lal Agarwal v. Rajiv Gandhi, (1987) (Supp) SCC 93 to contend that vague pleadings are fatal to the election petition.
- (c) (Santosh Yadav vs., Narender Singh) (2002) 1 SCC 160 to contend that fate of the election petition not only of parties before court but of entire constituency is at stake. Therefore, trial must be played out with open cards, not like a game of chess or hide and seek. All material facts, from which appropriate inferences may be drawn, must be set out in election petition and substantiated by cogent evidence before petitioner can succeed.
- (d) Ram Sukh vs., Dinesh Aggarwal, (2009) 10 SCC 541 to contend that material facts and full particulars are to be furnished. They are facts which, if established, would give petitioner the relief asked for. However, what could be said to be material facts would depend upon facts of each case and no rule of universal application can be laid down.
- (e) Shri Jitendra Bahadur Singh vs., Shri Kirshna Behari & others, (1969) 2 SCC 433 to contend that allegations must be supported by material facts.

12. The learned counsel for the petitioner has placed reliance on the following authorities and prays for rejection of the application.

- (a) K Devanna Naik vs., S Pakkappa & ors. Misc. Cvl.Nos.1360 & 1362/2011 in E PNo.23/2009 DD 12.7.2011, Para-9 therein which reads as follows:  
 "9.....He further submitted that the wrong acceptance of nomination paper of Respondent No.2 would not materially affect the result of the returned candidate, inasmuch as, all the votes polled in favour of Respondent No.2 would have been polled in favour of the petitioner and the petitioner cannot presume that all the votes polled in favour of Respondents 1 & 2 would have been polled in his favour. Such submissions will have to be considered at the time of disposal of the matter after full fledged trial. Evidence may be necessary to consider such questions of fact. Hence, this court does not wish to strike off the pleadings in paragraphs-11 and 12 of the election petition..."
- (b) Roop Lal Sathiv., Nachhattar Singh, AIR 1982 SC 1559 in which Para-41, relevant portion reads as follows:  
 "41.....The function of "particulars" under Rule 6 is quite different. They are not to be used in order to fill material gaps in a demurrable statement of claim-gaps which ought to have been filled by appropriate statements of the various material facts which together constitute the plaintiff's cause of action. The use of particulars is intended to meet a further and quite separate requirement of pleading, imposed in fairness and justice to the defendant. Their function is to fill in the picture of the plaintiff's cause of action with information sufficiently detailed to put the defendant on his guard as to the case he has to meet and to enable him to prepare for trial"

Therefore, it is submitted, what is pleaded in the election petition is in accordance with the requirement of law and does not warrant striking of any of the pleadings as sought for the application.

13. The petitioner has stated in the election petition that in respect of three polling stations namely, Mutaganahalli, Kogalli, Jagatageri, 21 excess voters were counted in favour of the first respondent. The material facts in support of the said pleadings is not pleaded rendering the said pleading as vague as it could be. Further it is stated in Para-9 of the petition that "it is quite possible that from the remaining 211 polling stations even if there is difference of 1 vote per each polling station it would make a marked difference in the votes polled and votes counted". This is based on presumption and assumption of the petitioner without being definite about the same, which cannot be the basis to proceed with trial of the case. Further the said 21 votes which are said to have been counted in favour of the first respondent, the material facts are not there to show that they are counted in favour of the first respondent only.

14. The postal ballot papers against issuance of 1017 ballot papers, only 897 papers were received in which 40 votes have been rejected without mentioning the reason. It is not the case of the petitioner that those rejected votes are voted in favour of the petitioner, which has materially affected the election results.

15. It is also the basis of the election petition that in the counting place there was commotion and lot number of people assembled and the agents were not in a position to hear properly the counting report by the counting staff. The petitioner has not at all made the Returning Officer a party to the Election Petition. This grievance of the petitioner cannot be answered by the respondents, who are the contestants in the election. Therefore, the petitioner is very casual and not serious about the case he wants to make and materials required to meet that case.

16. The material facts are facts upon which the petitioner's cause of action lies or the respondent's defence depends. In other words, material facts means the entire bundle of facts, which would constitute a complete cause of action and these must be concisely stated in the election petition. It is also true that no rule of universal application can be applied in finding out whether the statements of fact made in the election petition amount to material facts or not. If there are more than one allegations and the material facts are sufficient with regards to one of such allegations, the petition is maintainable and cannot be thrown out.

17. The distinction between material facts and particulars was brought out in Manubhai Mondial Amersey v. Popat Lal Manilal Joshi, (1969) 1 SCC 372. It was held that the settled principle of law, as it emerged from numerous decisions of the Supreme Court in regard to the question as what exactly was the content of expression "Material Facts and Particulars" which the election petitioner should incorporate in petition by virtue of Section 83(1) of the Act is that material facts are facts which if established would give the election petitioner the relief asked for.

18. "Particulars" are details in support of material facts pleaded by the party. The functions of particulars is to present as full a picture of the cause of action with such further information in detail as to make the opposite party understand the case he will have to meet. There may be some overlapping between material facts and particulars but the two are quite distinct. 'Particulars' give distinctive touch to the basic contours of a picture already drawn so as to make it full, more clear and more informative.

19. Keeping these cardinal principles so as to the facts to be stated by way of material facts and particulars, if the case of the petitioner is to be examined, the petition averments lack "material facts" and "particulars". Even if the case pleaded by the petitioner assumed to be true that 21 votes are excess counted and 41 votes are illegally rejected and in respect of other counting stations, no particulars are furnished, petitioner is not likely to get the reliefs sought for in the election petition. The election petition cannot be directed to fish out the evidence. In that view of the matter, the election petition lacks material facts and also the particulars and the petitioner has failed to make out a triable case. The pleadings in paragraphs-8, 9, 10, 11, 14, 15, 16, 17, 18, 23, 24 & 25 are liable to be struck out for want of material facts and particulars, and as a consequence there remains nothing to constitute cause of action for the election petition.

In the circumstances, the application I A No.1 /2015 is allowed. The pleadings in paragraphs-8, 9, 10, 11, 14, 15, 16, 17, 18, 23, 24 & 25 are struck off and as a consequence there remains no cause of action to put the election petition for trial. Accordingly, election petition is rejected.

Sd/-  
JUDGE

**V. RAGHAVENDRA**

Deputy Chief Electoral Officer  
(Training & Election Expenditure)  
O/o the Chief Electoral Officer,  
D.P.A.R. (Elections) Karnataka,  
Nirvachana Nilaya, Sheshadri Road,  
Bengaluru-560001

By Order,

**TAPAS KUMAR**

SR. PRINCIPAL SECRETARY  
ELECTION COMMISSION OF INDIA

P.R. 46  
SC-100

### **ELECTION COMMISSION OF INDIA**

Nirvachan Sadan, Ashoka Road, New Delhi-110001.

### **NOTIFICATION**

**Dated: 16<sup>th</sup> November, 2015, 25 Kartika, 1937 (Saka).**

No. 82/KT-LA/08/2013 - In pursuance of section 106 (b) of the Representation of the People Act, 1951 (43 of 1951), the Election Commission hereby publishes the order of the High Court of Karnataka dated 23-05-2015 in Election Petition No. 8 of 2013.

By Order,

**TAPAS KUMAR**

SR. PRINCIPAL SECRETARY  
ELECTION COMMISSION OF INDIA

## IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 23RD DAY OF APRIL 2015

BEFORE

THE HON'BLE MR. JUSTICE L. NARAYANA SWAMY,

ELECTION PETITION NO.8/2013

## BETWEEN:

S SUDHAKAR  
 AGED ABOUT 50 YEARS S/O SIDDAPPA  
 R/ AT NANDINI NILAYA  
 #90, CHANNAMUMBAPURA  
 SHIVAMOGGA TALUK  
 SHIVAMOGGA DISTRICT -577 201

... PETITIONER

(BY SMT. LEELA'P. DEVADIGA, ADVOCATE  
 FOR SRI A K SUBBAIAH)

AND

1. THE RETURNING OFFICER  
 NO.111 SHIMOGA RURAL CONSTITUENCY  
 SHIVAMOGGA DISTRICT  
 SHIVAMOGGA DISTRICT 577201
2. SMT. SHARADA POORYANAIK AGED ABOUT 42 YEARS  
 W/O POORYANAIK ASHIRWADA, 2ND CROSS  
 NEAR WATER TANK, SAVALANGA ROAD  
 BASAVESHWARA NAGAR, SHIVAMOGGA 577 201
3. G BASAVANNAPPA  
 AGED ABOUT 81 YEARS  
 S/O G THIMMAPPA  
 135, HUDKO COLONY KALLAHALLI,  
 VINOBANAGARA  
 SHIVAMOGGA -577204
4. K G KUMARA SWAMY  
 AGED ABOUT 60 YEARS S/O GANGAPPA  
 R/ AT NO.89, SRI GOWRI KALLAHALLI,  
 VINOBANAGAR, SHIVAMOGGA -577204

... RESPONDENTS

(BY SRI SUBRAMANAYA R., ADVOCATE FOR R4;  
 SRI S.V. PRAKASH, ADVOCATE FOR R2;  
 R1 AND R3 ARE PLACED EXPARTE)

THIS ELECTION PETITION IS PRESENTED U/Ss 81 & 83 OF THE REPRESENTATION OF THE PEOPLE ACT, 1951 READ WITH RULE 4 OF THE ELECTION PETITION PROCEDURE RULES, 1967, KARNATAKA, BY ONE SRI S.SUDHAKAR, PETITIONER 'ELECTOR', ALONG WITH HIS COUNSEL SMT LEELA P DEVADIGA, CHALLENGING THE ELECTION OF THE RESPONDENT NO.4- SRI K.G. KUMARA SWAMY TO THE KARNATAKA LEGISLATURE FROM NO.111, SHIVAMOGGA RURAL (SC RESERVE) ASSEMBLY CONSTITUENCY, GENERAL ELECTIONS HELD IN THE YEAR 2013, PRAYING TO DECLARE THAT THE ACCEPTANCE OF THE NOMINATION PAPER OF RESPONDENT NO.4 IS IMPROPER AND ILLEGAL AS HE IS NOT A PERSON WHO BELONGS TO THE SCHEDULED CASTE AND IS THEREFORE NOT ENTITLED TO CONTEST FROM NO.111, SHIVAMOGGA RURAL (SC) ASSEMBLY CONSTITUENCY, WHICH IS RESERVED FOR SCHEDULED CASTE.

DECLARE THAT THE IMPROPER ACCEPTANCE OF THE 4TH RESPONDENT NOMINATION PAPER HAS MATERIALLY AFFECTED THE RESULT OF THE ELECTION AND CONSEQUENTLY DECLARE THE ELECTION HELD ON 05.05.2013 FOR THE NO.111, SHIVAMOGGA ASSEMBLY CONSTITUENCY AS VOID.

ORDER FOR FRESH ELECTIONS TO NO.111, SHIVAMOGGA RURAL (SC) ASSEMBLY CONSTITUENCY.

THIS ELECTION PETITION COMING ON FOR ORDERS THIS DAY, THE COURT MADE THE FOLLOWING

**ORDER**

Petitioner 'States that he is an Elector/Voter of the No.111 of Shivamogga Rural (Scheduled Caste) Assembly Constituency and his name is found at Para No.103 Sl.No.320 of Voters' list. He challenged the election of respondent No.4 in the general elections held to the 14th Karnataka Assembly on 05.05.2013 and made a prayer to declare the said election as void. The Assembly Constituency is reserved under Article, 332 of the Constitution of India for the candidates belonging to' scheduled caste. The 4<sup>th</sup> respondent was the official nominee of the Bharatiya Janatha Party, was not qualified to contest from the Shivamogga Rural Constituency under Section 5 of the Representation of People Act, 1951 (hereinafter referred to as RP Act for short) Read with Conduct of the Election Rules, 1961. The 4th respondent, not a person belonging to scheduled caste but claimed falsely the status of the scheduled caste and contested the said election. The scheduled caste status certificate of the 4th respondent has been quashed by this Court in WP No.17975/2010 dated 30.05.2013. Hence, the application submitted by the 4th respondent to contest the Assembly Nomination from the said Constituency should have been dismissed or rejected by the Returning Officer and not doing so, electing an ineligible candidate, the 4th respondent, The acceptance of nomination of the 4th respondent is contrary to the provisions of RP Act. Hence, he prays that the 4th respondent's nomination papers has materially affected the result of the election and consequently to declare the election dated 05.05.2013 in respect of No.111 constituency as void.

2. This Court on production of draft issues by the petitioner as well as the 4th respondent has framed the issues on 15.04.2015 and posted this matter today for Filing the list of witnesses. The list of witnesses has to be furnished as per Rule 14 of the Election Petition Proceeding Rules Karnataka Notification ROC No.866/67 dated 28.03.1967 and to pay the process fee and the traveling allowances, the subsistence allowances and the local conveyance allowances for those who are required to be summoned. Today, no such list of witnesses as required under Rule 14 of the Act, has been filed. It is seen from the file of this election petition that the petitioner has not filed even the list of documents also. In order to examine the prayer made by the petitioner to declare the election of Shivamogga Assembly Constituency dated 05.05.2013 as void, list of witnesses and list of documents are very much required, without which election petition cannot be proceeded.

3. From examining the case of the petitioner on basis of the pleadings that acceptance of nomination of 4th respondent is resulting in adversely affecting the result of the petitioner, since, he was defeated and 4th respondent is succeeded in the declared election. It is his contention that the 4th respondent does not belong to scheduled caste. When such being his case, he should have filed the list of documents to challenge the fact that the 4th respondent does not belong to scheduled caste. In the absence of any documents and evidence I find it difficult to proceed further to examine the case. The petitioner is a 3rd party voter/ elector he cannot be examined himself to elucidate election process or the election agent and purpose would not be served by posting this matter for recording evidence of the petitioner and no application is also made seeking time atleast to produce the list of witnesses. Under these circumstances, it is inevitable for me to hold that this petition cannot be proceeded without the list of witnesses and documents. No useful purpose also serves if the petition is proceeded with.

4. The petitioner having filed the petition must be diligent in prosecuting the case, by producing documents and list of witnesses. The petitioner has simply wasted the public time for almost about two years. Hence, it is inevitable for this Court to dismiss this petition with costs.

5. Accordingly, it is dismissed and U/s.119 of R.P. Act, petitioner is directed to pay cost of Rs.5,000/- payable to High Court Legal Services Committee, Bengaluru within a period of four weeks from the date of receipt of a copy of this order.

Sd/-  
JUDGE

**V. RAGHAVENDRA**

Deputy Chief Electoral Officer  
(Training & Election Expenditure)  
O/o the Chief Electoral Officer,  
D.P.A.R. (Elections) Karnataka,  
Nirvachana Nilaya, Sheshadri Road,  
Bengaluru-560001

By Order,

**TAPAS KUMAR**

SR. PRINCIPAL SECRETARY  
ELECTION COMMISSION OF INDIA

**P.R. 47**

**SC-100**